

2021 No. 452

SHERIFF COURT

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021

<i>Made</i>	- - - -	<i>2nd December 2021</i>
<i>Laid before the Scottish Parliament</i>		<i>3rd December 2021</i>
<i>Coming into force</i>	- -	<i>17th December 2021</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council with such modifications as it thinks appropriate.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(b) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021.

(2) It comes into force on 17th December 2021.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Summary Application Rules 1999

2.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(c) is amended in accordance with this paragraph.

(2) After Part LII (care homes: emergency intervention orders)(d) of Chapter 3 (rules on applications under specific statutes)(e), insert—

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).
(b) 2014 asp 18.
(c) S.I. 1999/929, last amended by S.I. 2020/942.
(d) Part LII was inserted by S.S.I. 2020/166.
(e) Chapter 3 was last amended by S.S.I. 2020/166.

“PART LIII

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019

Application and interpretation of this Part

3.53.1.—(1) This Part applies to applications under—

- (a) section 34 (application for order authorising search in relation to child under 12);
- (b) section 42 (application for child interview order);
- (c) section 61 (application for order authorising taking of prints and samples from child),

of the Age of Criminal Responsibility (Scotland) Act 2019(a).

(2) In this Part, “the 2019 Act” means the Age of Criminal Responsibility (Scotland) Act 2019 and, unless the context otherwise requires, words and expressions used in this Part and in the 2019 Act have the meaning given by that Act.

Form of application

3.53.2. An application under—

- (a) section 34 of the 2019 Act must be made in Form 76;
- (b) section 42 of the 2019 Act must be made in Form 77;
- (c) section 61 of the 2019 Act must be made in Form 78.

Processing of application

3.53.3.—(1) On receipt by the court of an application to which this Part applies, it must be placed before the sheriff forthwith.

(2) Rule 2.5 (order for intimation to interested persons by the sheriff) does not apply to applications to which this Part applies.

(3) Where—

- (a) under sections 35(2), 43(2) or 62(2) (consideration of need for enquiry or hearing) of the 2019 Act, the sheriff considers it appropriate to enquire or hold a hearing;
- (b) under sections 35(3), 43(3) or 62(3) (consideration of opportunity to make representations) of the 2019 Act, the sheriff considers that any of the persons mentioned in paragraphs (a) to (d) of those subsections should be given an opportunity to make representations,

the sheriff may make such order as the sheriff thinks fit in relation to that.

Form of order

3.53.4. An order under—

- (a) section 36 (order authorising search in relation to child under 12) of the 2019 Act must be in Form 79;
- (b) section 44(2) (child interview order) of the 2019 Act must be in Form 80;
- (c) section 63 (order authorising taking of prints and samples from child) of the 2019 Act must be in Form 81.

(a) 2019 asp 7.

Permission to appeal to Sheriff Appeal Court

3.53.5.—(1) An application for permission to appeal against a decision of the sheriff under sections 36, 44(2) or 63 of the 2019 Act must be made by motion.

(2) Within 1 day after permission to appeal has been granted by the sheriff, the court must transfer the process to the Clerk of the Sheriff Appeal Court.”.

(3) In schedule 1 (forms)(a), after Form 75 insert Forms 76 to 81 as set out in schedule 1 of this Act of Sederunt.

Amendment of the Sheriff Appeal Court Rules 2015

3.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2015(b) is amended in accordance with this paragraph.

(2) In rule 6.1 (application of this Chapter)(c), after paragraph (d) insert—

“(da) an appeal under section 38(3), 44(3) or 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019(d) (see Chapter 31);”.

(3) After Chapter 30 (appeals by stated case under Part 15 of the Children’s Hearings (Scotland) Act 2011)(e), insert—

“CHAPTER 31

Appeals under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019

Application of this Chapter

31.1. This Chapter applies to an appeal against the decision of a sheriff under section 38(3), 44(3) and 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019(f).

Form of appeal

31.2.—(1) An appeal is made by lodging a note of appeal in Form 31.2.

(2) Rule 6.2(2)(a) to (ba) and (f) to (g) applies for the purpose of making an appeal under this rule.

Hearing of appeal

31.3.—(1) On receipt of the appeal, the Clerk must fix forthwith a hearing to take place within 3 working days (within the meaning of section 76 of the Age of Criminal Responsibility (Scotland) Act 2019) and intimate the date, time and place of that hearing to—

- (a) the constable who applied for the order to which the decision relates;
- (b) the child or person acting on behalf of the child to whom the decision relates;
- (c) any other person the Court considers has an interest in the proceedings.

(a) Schedule 1 was last amended by S.S.I. 2017/460.
(b) S.S.I. 2015/356, last amended by S.S.I. 2021/226.
(c) Rule 6.1 was amended by S.S.I. 2015/419.
(d) 2019 asp 7.
(e) Chapter 30 was last amended by S.S.I. 2016/194.
(f) 2019 asp 7.

Determination of appeal

31.4.—(1) At the conclusion of the hearing, the Court may either give its decision orally or reserve judgment.

(2) Where the Court reserves judgment, it must give its decision in writing within 28 days.

(3) The President of the Sheriff Appeal Court may vary the period in paragraph (2).”.

(4) In schedule 1 (administrative provisions)(**a**), after paragraph 1(3)(h) insert—

“(ha) a hearing fixed under Chapter 31 (appeals under Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019);”.

(5) In schedule 2 (forms)(**b**), after Form 30.5 insert Form 31.2 as set out in schedule 2 of this Act of Sederunt.

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
2nd December 2021

(a) Schedule 1 was last amended by S.S.I. 2016/315.
(b) Schedule 2 was last amended by S.S.I. 2017/186.

SCHEDULE 1

Paragraph 2(3)

Form 76

Rule 3.53.2(a)

**Form of application for an Order under section 36 of the Age of Criminal
Responsibility (Scotland) Act 2019**

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref No:

AT *(insert place of sheriff court)*

APPLICATION

by

[A.B.] *(insert designation and address of constable)*

Applicant

The applicant applies to the court for an order under section 36 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) authorising:

- [1. A search of *(insert name, address and date of birth of child to which the search relates)* (“the child”);]
- [2. Entry to and search of the premises at *(insert address)* (“the premises”);]
- [3. Entry to and search of the vehicle *(insert such description to identify the vehicle to be searched including registration number or such other suitable identifier)* (“the vehicle”); and]
- [4. The seizure of anything the constable may find [on the child,] [[or] on the premises,] [[or] in the vehicle] relevant to the investigation of the behaviour to which the application relates.]

Statement

1. This application is made pursuant to section 34 of the 2019 Act.
2. The child in respect of whom the order is sought is *(insert name, address and date of birth)*.
3. The child is [habitually resident within the area of the court] [[and] the behaviour to which the application relates is suspected to have occurred within the area of the court.] This court accordingly has jurisdiction.
4. A parent (which includes guardian and any person who has care of the child) of the child [is *(insert name and address)* OR is not known].

5. The applicant has reasonable grounds to suspect that—
- a. the child [by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person *OR* by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person]; and
 - b. evidence relevant to the investigation of that behaviour may be found [on the child,] [[or] on the premises] [[or] in the vehicle].
6. *(insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*
- [7. The applicant has reasonable grounds to suspect that evidence relevant to the investigation of the behaviour to which the application relates may be lost, disposed of, or tampered with, if an opportunity to make representations about this application was to be given to [the child,] [[or] a parent of the child,] [[or] any other person considered to have an interest in the application].
- (insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*
8. The applicant attaches to this application the following supporting evidence—
- (insert details).*
9. In the circumstances narrated the applicant is entitled to the order(s) sought and such order(s) should be granted accordingly.

(Signed)

[P.Q.] *(Applicant)*

or [X.Y.] (add designation and business address)

Solicitor for Applicant

(insert date)

Form 77

Rule 3.53.2(b)

Form of application for an Order under section 44(2) of the Age of Criminal Responsibility (Scotland) Act 2019

SHERIFFDOM OF (*insert name of sheriffdom*)

Court Ref No:

AT (*insert place of sheriff court*)

APPLICATION

by

[A.B.] (*insert designation and address of constable*)

Applicant

The applicant applies to the court for an order under section 44(2) of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) authorising:

1. An investigative interview of (*insert name, address and date of birth of child to which the investigative interview relates*) (“the child”);
- [2. (*specify any other action required in connection with the interview, in respect of which the court’s authority is sought pursuant to section 44(5) of the 2019 Act.*)]

Statement

1. This application is made pursuant to section 42 of the 2019 Act.
2. The child in respect of whom the order is sought is (*insert name, address and date of birth*).
3. The child is [habitually resident within the area of the court] [[and] the behaviour to which the application relates is suspected to have occurred within the area of the court]. This court accordingly has jurisdiction.
4. A parent (which includes guardian and any person who has care of the child) of the child [is (*insert name and address*) *OR* is not known].
5. The applicant—
 - a. has reasonable grounds to suspect that the child, while under 12 years of age, [by behaving in a violent or dangerous way, has caused or risked causing serious physical harm to another person *OR* by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person]; and

- b. considers that an investigative interview of the child in relation to the behaviour to which the application relates is necessary to properly investigate the child's behaviour and the circumstances surrounding it (including whether a person other than the child has committed an offence).
6. *(insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*
7. The applicant has determined that *(insert name of local authority)* is the relevant local authority in relation to the planning and conduct of the proposed investigative interview of the child. The applicant [has consulted that local authority about the making of this application and the provisional plans for the investigative interview *OR* has not consulted the local authority as it was not practicable to do so].
8. An investigative interview of the child [took place on *OR* was scheduled to take place on] *(insert date, time, location)* by virtue of section 40(1) of the 2019 Act. The child [[and] the child's parent *(insert name)*] withdrew their previously given agreement to the investigative interview of the child being conducted *(insert here a brief statement indicating when and how such an agreement was withdrawn)* [[and] failed to comply in a material respect with the plans drawn up for the investigative interview].
- [9. Questioning of the child took place on *(insert date, time and location)* by virtue of section 54 of the 2019 Act, on the authority of *(insert name of authorising senior officer)*.]
- [10. The applicant has reasonable grounds to suspect that evidence relevant to the investigation of the behaviour to which the application relates may be lost, disposed of or tampered with, if an opportunity to make representations about this application was to be given to [the child] [[or] a parent of the child,] [[or] any other person considered to have an interest in the application.]
- (insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*]
11. The applicant attaches to this application the following supporting evidence—
- (insert details).*
- (The provisional plans for the investigative interview of the child must be attached to this application).*
12. In the circumstances narrated the applicant is entitled to the order(s) sought and such order(s) should be granted accordingly.

(Signed)

[P.Q.] *(Applicant)*

or [X.Y.] (add designation and business address)

Solicitor for Applicant

(insert date)

Form 78

Rule 3.53.2(c)

Form of application for an Order under section 63 of the Age of Criminal Responsibility (Scotland) Act 2019

SHERIFFDOM OF *(insert name of sheriffdom)*

Court Ref No:

AT *(insert place of sheriff court)*

APPLICATION

by

[A.B.] *(insert designation and address of constable)*

Applicant

The applicant applies to the court for an order under section 63 of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) authorising:

1. the taking of relevant physical data and/or relevant samples from *(insert name, address and date of birth of child)* (“the child”);
(insert details of data and/or samples to be taken, including, where relevant whether authority is sought to taken an intimate sample).
- [2. and *(specify any other action required in connection with the taking of relevant physical data/samples from the child pursuant to section 63(4) and (6) of the 2019 Act).*]

Statement

1. This application is made pursuant to section 61 of the 2019 Act.
2. The child in respect of whom the order is sought is *(insert name, address and date of birth)*.
3. The child is [habitually resident within the area of the court] [[and] the behaviour to which the application relates is suspected to have occurred within the area of the court.] This court accordingly has jurisdiction.
4. A parent (which includes guardian and any person who has care of the child) of the child [is *(insert name and address and relationship to the child)* OR is not known].

5. The applicant—
- a. has reasonable grounds to suspect that the child, [by behaving in violent or dangerous way, has caused or risked causing serious physical harm to another person *OR* by behaving in a sexually violent or sexually coercive way, has caused or risked causing harm (whether physical or not) to another person]; and
 - b. considers that the taking of the relevant physical data or relevant sample from the child is necessary to properly investigate the child's behaviour and the circumstances surrounding it.
6. *(insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*
- [7. Physical data or samples *(specify the data or sample taken)* were taken from the child on *(insert date, time, location)* by virtue of section 69 of the Act, and on the authority of *(insert name of authorising senior officer).*]
- [8. The applicant proposes that the intimate sample(s) to be taken from the child is [are] taken by *(insert proposed class or classes of health care professional as per section 65(2) of the Act).*]
- [9. The applicant has reasonable grounds to suspect that evidence relevant to the investigation of the behaviour to which the application relates may be lost, disposed of, or tampered with, if an opportunity to make representations about this application was to be given to [the child,] [[or] a parent of the child,] [[or] any other person considered to have an interest in the application].
- (insert here a brief statement indicating the basis upon which these matters are known or suspected by the applicant).*]
10. The applicant attaches to this application the following supporting evidence—
- (insert details).*
11. In the circumstances narrated the applicant is entitled to the order(s) sought and such order(s) should be granted accordingly.

(Signed)

[P.Q.] *(Applicant)*

or [X.Y.] *(add designation and business address)*

Solicitor for Applicant

(insert date)

Form 79

Rule 3.53.4(a)

Form of order authorising a search in relation to a child under 12

Sheriff Court:

..... 20

Court Ref No:

Order sought from the court

The sheriff, having considered an application made by (*insert name of applicant*) for an order under section 36 of the Act of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) in respect of (*insert name of child*), and productions lodged herewith, and being satisfied as necessary as to the matters mentioned in section 36(2) of the 2019 Act,

- 1 Makes an order in terms of section 36 of the 2019 Act authorising
 - *a search of (*insert details of the child as given in the application*);
 - *entry to and search of the premises (*insert details of premises as given in the application*);
 - *entry to and search of vehicle (*insert such description to identify the vehicle to be searched including any registration number or such other suitable identifier as given in the application*);
 - *the seizure of anything the constable may find on the child or on premises or in the vehicle relevant to the investigation of the behaviour to which the application relates.

2. Directs notification of this order (*insert details of method and timing of notice*) to (*insert the name and designation of any person other than the child whom the sheriff considers appropriate*).

This order comes into force on (*date*). It ceases to be in force on (*date*).

**Delete as appropriate*

(*signed*)

Sheriff

Form 80

Rule 3.53.4(b)

Form of Child Interview Order

Sheriff Court:

..... 20

Court Ref No:

The sheriff, having considered an application made by (*insert name of applicant*) for an order under section 44(2) of the Act of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) in respect of (*insert name of child*) and productions lodged therewith, and being satisfied as necessary as to the matters mentioned in section 44(2) of the 2019 Act,

1. Makes an order in terms of section 44(2) of the 2019 Act authorising:
 - *an investigative interview of (*insert details of the child as given in the application*) in relation to the behaviour to which the investigation relates;
 - *and (list any other action required in connection with the interview, about which the court’s additional authority is sought pursuant to sections 44(5) and 44(6) of the 2019 Act).
2. Directs notification of this order (*insert details of method and timing of notice*) to (*insert the name and designation of any person other than the child whom the sheriff considers appropriate*).

This order comes into force on (*date*). It ceases to be in force on (*date*).

(*where different provisions are to come into force, or to cease to be in force, on different dates, specify the dates in respect of each provision*).

**Delete as appropriate*

(*signed*)

Sheriff

Form 81

Rule 3.53.4(c)

Order authorising taking of prints and samples from a child

Sheriff Court:

..... 20

Court Ref No:

The sheriff, having considered an application made by (*insert name of applicant*) for an order under section 63 of the Act of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”) in respect of (*insert name of child*), and productions lodged herewith, and being satisfied as necessary as to the matters mentioned in section 63(2) of the 2019 Act,

1. Makes an order in terms of section 63 of the 2019 Act authorising
 - *the taking of the relevant physical data and/or physical samples specified in the application (*insert details physical data/samples to be taken, as given in the application*);
 - *the taking of the relevant intimate samples, as specified in the application (*insert details of intimate samples to be taken and class of person (as set out in section 65(2) of the 2019 Act) authorised to take said samples, as given in the application*).
 - *and (*add any additional matters to be dealt with in the order in terms of sections 63(4) and (6) of the 2019 Act*).
2. Directs notification of this order (*insert details of method and timing of notice*) to (*insert the name and designation of any person other than the child whom the sheriff considers appropriate*).

This order comes into force on (*date*). It ceases to be in force on (*date*).

(*where different provisions are to come into force, or to cease to be in force, on different dates, specify the dates in respect of each provision*).

*Delete as appropriate

(*signed*)

Sheriff

Form 31.2

Rule 31.2(1)

Note of appeal

APPEAL

to

THE SHERIFF APPEAL COURT

[A.B.] (*designation and address*)

APPLICANT and [APPELLANT/RESPONDENT]

[C.D.] (*designation and address*)

RESPONDENT and [RESPONDENT/APPELLANT]

1. The appellant appeals to the Sheriff Appeal Court against the decision of the sheriff at (*place*) (*specify nature of decision*) made on (*date*). The court reference number is (*insert court reference number*). [The appellant's email address is (*insert contact email address of the appellant, if the appellant has one*).] [The respondent's email address is (*insert contact email address of the respondent, if known*).] [The following person[s] [is/are] considered to have an interest in the proceedings: (*insert names and addresses and, if known, contact email addresses of any persons considered to have an interest in the proceedings*).]

GROUND(S) OF APPEAL

2. (*State briefly (in numbered paragraphs) the ground(s) of appeal*).

AVAILABILITY OF SHERIFF'S NOTE

3. The sheriff has provided a note setting out the reasons for the decision appealed against, and a copy is appended. [*or*
3. The appellant has requested that the sheriff write a note, but the note is not yet available. *or*]
3. The sheriff has not provided a note setting out the reasons for the decision appealed against, and the appellant requests that the sheriff write a note.] [*or*
3. The sheriff has not provided a note setting out the reasons for the decision appealed against. The appellant considers that the appeal is sufficiently urgent that the Sheriff Appeal Court should hear and determine the appeal without the sheriff's note. (*State briefly (in numbered paragraphs) why the appeal is sufficiently urgent to justify its determination without the sheriff's note*).]

IN RESPECT WHEREOF

[P.Q.] (Applicant)

[A.B.] [or [C.D.]], Appellant

or [X.Y.] Solicitor for Appellant

(insert business address of solicitor)

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 (“the Summary Application Rules”) and the Act of Sederunt (Sheriff Appeal Court Rules) 2015 (“the Sheriff Appeal Court Rules”) in consequence of the Age of Criminal Responsibility Act 2019 (“the 2019 Act”).

Paragraph 2(2) inserts a new Part LIII into Chapter 3 of the Summary Application Rules setting out the procedures which apply when a constable seeks an order under section 34 (application for order authorising search in relation to child under 12), section 42 (application for child interview order), or section 61 (application for order authorising taking of prints and samples from child) of the 2019 Act. In addition, it provides for the procedure by which permission to appeal against a decision of the sheriff under sections 36, 44(2) or 63 of that Act must be made.

Paragraph 2(3) inserts new Forms 76 to 79 (forms of application) and Forms 79 to 81 (forms of order) into the Summary Application Rules.

Paragraph 3(2) inserts a new paragraph into rule 6.1 of the Sheriff Appeal Court Rules to provide that appeals under the 2019 Act follow the procedure set out in new Chapter 31.

Paragraph 3(3) inserts new Chapter 31 into the Sheriff Appeal Court Rules and provides that an appeal to the Court under section 38(1) (appeal against decision under section 36), section 46(1) (appeal against decision under section 44) and section 67(1) (appeal against decision under section 63) of the 2019 Act is made by lodging a note of appeal in Form 31.2.

Paragraph 3(5) inserts Form 31.2 into the Sheriff Appeal Court Rules.

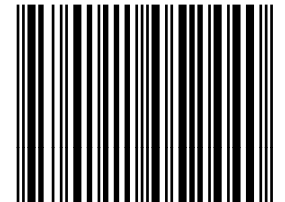
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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£6.90

<http://www.legislation.gov.uk/id/ssi/2021/452>

ISBN 978-0-11-105244-0



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